

LAW OFFICES

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February 26, 1985

Daniel B. Silver, Esq.
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Dear Mr. Silver:

As Chairman of the Working Group on Intelligence and Criminal Code Reform, I am pleased to enclose for your review and appropriate action the following documents:

1. Mr. Martin's draft memorandum on the Defense Information Protection Act of 1985.

2. [] memorandum with respect to the draft Espionage Prevention Act of 1985.

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3. Mr. Hirschberg's letter of February 24, 1984 with attached report concerning a proposed defense for employees of intelligence agencies in certain criminal prosecutions.

Concerning the first document, at the meeting of the Working Group on February 25, 1985, it was my position that since the drafting changes which Mr. Martin had been requested to make were being undertaken at the request of the Committee, the Working Group would not vote on the propriety of those changes. Mr. Stern mentioned, however, that he regarded Mr. Martin's memorandum to be responsive to the criticisms which had been voiced by the full Committee.

I took a like position with regard to [] memorandum. Mr. Stern did not, however, believe that [] memorandum was responsive to the criticisms made by the Committee. Moreover, Mr. Stern continued to voice apprehensions concerning the wisdom of the entire proposal, principally because he is concerned that a prosecution could be undertaken under the proposal without proof of knowledge that the defendant knew the information was classified. It was my decision the Mr. Stern's concerns had previously been addressed by the Working Group and voted upon and that, therefore, it would be inappropriate to reopen the discussion.

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Concerning Mr. Hirschberg's report, please note that it was drafted by him with the assistance of Messrs. Stern and Gettings, who endorsed its content. The Working Group discussed the proposal and agreed to the following changes in the draft statute. In Section (a) after the word that and before the colon, insert the words "he or she." In Subsections (a)(1) and (a)(2), delete the personal pronoun he. In Subsection (a)(3), delete the words the specific conduct in which he on the first line. Also, delete the words he in good faith on the third and fourth lines. Insert the words "in specific conduct" after the word engaged on the first line. Insert the words "in good faith" after the word authorization on the fourth line. In Subsection (b)(2) delete the words from his agency. In Subsection (c)(2), delete the personal pronoun he. Footnote 4 on page 3 of the recommendation should be amended to reflect that S.1630 did not pass.

As so modified, without dissent, it was the consensus of the Working Group to adopt Mr. Hirschberg's proposal.

As I indicated to you during earlier telephone conversations, this concludes my participation in the work of the Working Group and I have so informed the members. I suggest that speedy arrangements be made to appoint Chairpersons for the Working Group since I believe that the group reflects a collection of talent which should remain a resource available to the Committee. I learned a great deal from the members of the Working Group and I trust that its work has been of use to the Committee.

With best personal regards, I am,

Very truly yours,


Axel Kleiboemer

AK/sd
Enclosures

cc w/encl.: All Members of the
Working Group